KIM TENG REALTY PTE. LTD.

v.

OOI HOE SAN

COURT OF APPEAL, SINGAPORE
TS SINNATHURAY J
LAI KEW CHAI J
LP THEAN J
[CIVIL APPEAL NO. 85 OF 1982]
25 MAY 1984

LANDLORD AND TENANT: *Action for recovery of premises - Whether tenant a statutory tenant - Whether sub-tenant a statutory tenant.*

The appellants were owners of the premises, which were premises within the meaning of the Control of Rent Act (Cap.266) ("the Act"). Prior to the purchase in 1972 of the premises by the appellants, the premises were let to one Ng Hiang Liat, who in turn by a tenancy agreement in Chinese sub-let the whole of the premises to the partnership firm, Seng Bee Rubber Company, of which the respondent was one of the partners, by a number of successive agreements, from 1970 to 1979. Soon after the purchase the appellants served a notice to quit on Ng Hiang Liat but took no further step until 1979. In 1975 the respondent became the sole proprietor of the business. In 1979, the appellants served a second notice to quit on Ng Hiang Liat and soon thereafter instituted proceedings, claiming for possession of the premises and for mesne profits. Judgment was given for the appellants by the District Court Judge, but the decision was reversed on appeal by the respondent. The appellants appealed.

Held:

[1] Ng Hiang Liat was not in actual or physical possession of the premises at the time of the second notice to quit. The facts that he had some furniture at the premises and that the second notice was served on him by post at the premises were not sufficient by themselves to support the inference that Ng Hiang Liat was in actual or physical possession of the premises.

[2] The first notice effectively determined the contractual tenancy of Ng Hiang Liat and in the circumstances, Ng Hiang Liat became a trespasser. He did not qualify as a statutory tenant within the meaning of s. 27 of the Act, as he was not in actual or physical possession of the premises and as he was receiving rent in respect of the sub-letting in excess of 110% of the recoverable rent paid by him to the appellants.

[3] The respondent was a statutory tenant of the appellants. On the expiry of the contractual tenancy of Ng Hiang Liat, and on his failure to qualify as a statutory tenant, the partners of the firm became statutory tenants of the appellants by operation of law. After the partners had retired, the respondent's tenancy as a joint tenant remained vested in him

[Appeal dismissed.]

Cases referred to:

Tan Khio Soei & Anor. v. Ban Hin Lee Bank Ltd. [1964] MLJ 71
Syed Ahmad Al-Junied & Ors. v. Reshty [1969] 1 MLJ 87
Guan Seng Kee Ltd. v. Buan Lee Seng Ltd. [1954] MLJ 34
Tan Eng Seng v. Teo Soon Kiat [1956] MLJ 146
Solomon v. Orwell [1954] 1 WLR 629

Legislation referred to:
Control of Rent Act [Sing], ss. 15(1)(g), 27

JUDGMENT

TS Sinnathuray J, Lai Kew Chai J, LP Thean J:

The appellants are the owners of the premises, 327, Beach Road, Singapore (the "said premises") which they purchased in 1972 and which are premises within the meaning of the Control of Rent Act (Cap. 266) (the "Act"). Prior to the purchase by the appellants the said premises were let out to one, Ng Hiang Liat, who in turn by a tenancy agreement in Chinese dated 1 September 1970 (Exhibit D.1C) sub-let the whole of the said premises to the partnership firm, Seng Bee Rubber Company, of which the respondent was one of the partners, for a term of three years from 1 October 1970 to 30 September 1973. Soon after the purchase of the said premises, the appellants duly served on Ng Hiang Liat a notice to quit dated 26 October 1972 determining his tenancy of the said premises on 30 November 1972. Since then no further step or action appeared to have been taken by the appellants in respect of the said premises until August 1979. In the meanwhile three further agreements in Chinese dated 1 October 1973, 1 October 1974 and 1 October 1976 respectively (Exhibits D.1D, 1E and D.1F) relating to the letting of the said premises were made between Ng Hiang Liat and Seng Bee Rubber Company covering three successive periods respectively, namely: 1 October 1973 to 30 September 1974, 1 October 1974 to 30 September 1976 and 1 October 1976 to 30 September 1979. These agreements were couched in a form slightly different from that of the first agreement (Exhibit D.1C), but in substance they were intended by the parties thereto as tenancy agreements of the said premises though, for reasons which we give hereunder, they did not operate as such in law. On 30 August 1975 the respondent's partners retired from the partnership firm and he became the sole proprietor of the business conducted under the same name or style of Seng Bee Rubber Company. In August 1979 or thereabout the appellants enquired from Ng Hiang Liat particulars of any sub-letting of the said premises. Enquiry was also made by the appellants with the respondent as to the right of the respondent in the said premises. On 6 September 1979 the appellants served on Ng Hiang Liat a second notice to quit expressed to determine his tenancy of the said premises on 31 October 1979. Soon thereafter the appellants instituted proceedings in the District Court against Ng Hiang Liat and the respondent claiming for possession of the said premises and mesne profits.

Originally the appellants in their statement of claim sought to recover possession of the said premises against Ng Hiang Liat on the ground that he was not a statutory tenant under s. 27(a) of the Act and against the respondent on the ground that he was in unlawful occupation of the said premises. In the course of the trial before the learned District Judge evidence came to light that Ng Hiang Liat had been receiving rent from the respondent in excess of 110% of the recoverable rent paid by Ng Hiang Liat to the appellants. Thereupon the appellants with leave of the Court amended the statement of claim by adding a further and alternative ground for recovery of possession under s. 15(1)(g) of the Act, i.e., that Ng Hiang Liat had sub-let the said premises to the respondent and had received rents in respect of such sub-letting in excess of 110% of the recoverable rent paid by Ng Hiang Liat.

The learned District Judge, on the evidence before him, found that the ground for recovery of possession of the said premises from Ng Hiang Liat under s. 15(1)(g) was made out. He gave judgment for the appellants against Ng Hiang Liat for possession and for payment of mesne profits in the sum of $163.20 per month from 31 October 1979 and costs. As against the respondent the learned District Judge found that no sub-tenancy to the respondent was created by Ng Hiang Liat and vis-a-vis the appellants the respondent was only a licensee.

He held that prior to the first notice to quit dated 26 October 1972 the sub-tenancy of the whole said premises was granted to the partnership firm of Seng Bee Rubber Company and that the partnership had terminated on 30 August 1975. Thereafter, when the respondent entered into the last agreement (Exhibit D.1F) with Ng Hiang Liat on 1 October 1976 there was a new sub-letting to a new firm, a sole proprietorship known as Seng Bee Rubber Company. The respondent could not derive any right of sub-tenancy under the new sub-letting as by that time Ng Hiang Liat had become a statutory tenant, and as such he could not sub-let the whole of the said premises to the respondent. In support, the learned District Judge relied on the decision of Whyatt CJ in *Tan Eng Seng v. Teo Soon Kiat* [1956] MLJ 146 and a dictum of Lord Denning MR in *Solomon v. Orwell* [1954] 1 WLR 629 at p. 633. He therefore made an order against the respondent for possession and for payment to the appellants of mesne profits in the sum of $675 per month from 30 October 1979 and costs.

Against the judgment of the learned District Judge only the respondent appealed, and no appeal was brought by Ng Hiang Liat. The appeal was heard by A.P. Rajah J who allowed the appeal holding that the learned District Judge, having found for the appellants against Ng Hiang Liat under s. 15(1)(g) of the Act, should have further held, as a necessary consequence thereof, that the respondent by virtue of s. 26 of the Act had become and was at all material times a statutory tenant of the appellants. He found that Ng Hiang Liat was in possession of the said premises at the time the second notice to quit dated 6 September 1979 was served on him for the following reasons:

(1) his furniture was on the said premises and the letting of the said premises to the respondent included rental for the said furniture;

(2) the second notice to quit was given on the basis that Ng Hiang Liat was a tenant of the appellants and was required "to quit and deliver possession" of the said premises to the appellants; and

(3) the second notice to quit was served on Ng Hiang Liat at the said premises.

Against the decision of A.P. Rajah J the appellants now appeal. We find ourselves in complete agreement with A.P. Rajah J that the order made by the learned District Judge against the respondent could not be sustained and was rightly set aside. However, with great respect to A.P. Rajah J we are unable to agree with his finding by inference that Ng Hiang Liat was in possession of the said premises at the time the second notice to quit was served on him. Ng Hiang Liat had not been in actual or physical possession of the said premises as from 1 October 1970, when he sub-let the whole of the said premises to the partnership firm of Seng Bee Rubber Company. He had never regained or resumed possession at any time thereafter and was certainly not in possession at the time of service of the second notice to quit on or about 6 September 1979. It is true that he had some furniture therein, as his sub-letting included the furniture and that it was in evidence that the second notice was served on him by post at the said premises. However, in our view, these facts alone are not sufficient to support the inference that he was in actual or physical possession of the said premises.

In our opinion the second notice to quit served on Ng Hiang Liat was an act of surplusage and presumably was effected out of abundance of caution on the part of the appellants. It had no effect whatsoever. The first notice to quit dated 26 October 1972 was duly served on Ng Hiang Liat. That notice effectively determined the contractual tenancy of Ng Hiang Liat on its expiry, i.e., 30 November 1972. At that time Ng Hiang Liat was not in actual possession of the said premises, as he had already sub-let the whole of the said premises to the partnership firm of Seng Bee Rubber Company, and further in respect of such sub-letting he

was receiving rent in excess of 110% of the recoverable rent paid by him to the appellants. In the circumstance, Ng Hiang Liat, on determination of his contractual tenancy, did not become a statutory tenant within the meaning of s. 27 of the Act. As was decided in the case of *Tan Khio Soei & Anor. v. Ban Hin Lee Bank Ltd.* [1964] MLJ 71, four conditions must be satisfied before a person can become a statutory tenant, namely:-

(a) he must have been a tenant of the premises;

(b) his tenancy must have been determined, not assigned;

(c) he must have remained in possession of the premises after the determination of his tenancy; and

(d) the provisions of the Act must prevent him from being deprived of possession by the landlord of the premises.

Ng Hiang Liat clearly did not fulfil the third and fourth conditions, and therefore failed to qualify as a statutory tenant of the appellants as from 1 December 1972. As from that date he became a trespasser. In the case of *Syed Ahmad Al-Junied & Ors. v. Reshty* [1969] 1 MLJ 87, the tenant received rent in respect of her sub-letting in excess of 110% of the recoverable rent paid to the landlord and a case for recovery of possession under s. 15(1)(g) of the Act was made out by the landlord. It was there held by the Judicial Committee of the Privy Council that upon expiry of the notice to quit the tenant, having failed to qualify as a statutory tenant, became a trespasser.

We now turn to consider the right of the respondent in relation to the said premises. Prior to the determination of the contractual tenancy of Ng Hiang Liat on 30 November 1972, the partners of Seng Bee Rubber Company were contractual sub-tenants of Ng Hiang Liat. Upon the determination of the contractual tenancy of Ng Hiang Liat, the contractual sub-tenancy of the partners also determined and they became statutory tenants of the said premises; since the interest of Ng Hiang Liat as a tenant of the said premises had ceased, they became statutory tenants of the appellants: *Guan Seng Kee Ltd. v. Buan Lee Seng Ltd.* [1954] MLJ 34. The respondent was a partner of the firm at that time and accordingly he and his partners at that time held the statutory tenancy of the said premises as joint tenants and his tenancy as a joint tenant remained vested in him after his partners retired from the firm, and he became and is a statutory tenant of the appellants. It therefore follows that the three agreements (Exhibits D1D, D1E and D1F) purporting to create a sub-tenancy of the said premises had no such effect at all, as at the time, Ng Hiang Liat was already a trespasser and could not create or grant any sub-tenancy of the said premises to the respondent.

Mr. Tan Chin Tiong on behalf of the appellants contended that on the expiry of the first notice to quit the subtenancy of the said premises determined and the partners of Seng Bee Rubber Company became statutory tenants of Ng Hiang Liat and such statutory tenancy was surrendered either at the time when the second agreement dated 1 October 1973, (Exhibit D1D) was entered into between the partnership firm and Ng Hiang Liat or at the time when the respondent entered into the last agreement dated 1 October 1976, (Exhibit D.1F). With respect, this argument cannot be right. If the contractual tenancy of Ng Hiang Liat determined on the expiry of the first notice to quit and Ng Hiang Liat failed to qualify as a statutory tenant, then two consequences must ensue: (i) the interest of Ng Hiang Liat as a tenant of the said premises ceased and he became a trespasser, and (ii) the partners of the firm, Seng Bee Rubber Company who were contractual subtenants of Ng Hiang Liat became statutory tenants of the appellants. If the appellants had at that time initiated proceedings against Ng Hiang Liat for recovery of possession on the grounds as they did in summons No. 5794 of

1979 in the District Court, they would have succeeded in obtaining an order for possession against Ng Hiang Liat. The mere inertia or absence of such action on the part of the appellants for so many years clearly did not alter, and could not have altered, the status of the statutory tenancy which was created by operation of law at that time.

For reasons which we have given, the appeal is dismissed with costs and the sum paid by the appellants by way of security for the respondent's costs be paid to the respondent to account of his costs.

Also found at [1984] 2 CLJ 69